

**UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
WACO DIVISION**

LUPERCAL LLC,

Plaintiff

v.

**FROST BANKERS, INC. and
FROST BANK,**

Defendants

Case No. 6:20-cv-00358

JURY TRIAL DEMANDED

COMPLAINT FOR PATENT INFRINGEMENT

Plaintiff Lupercal LLC (“Lupercal” or “Plaintiff”) files this Complaint for patent infringement against Defendants Frost Bankers, Inc. and Frost Bank (collectively “Frost” or “Defendant”), and alleges as follows:

NATURE OF THE ACTION

1. This is an action for patent infringement arising under 35 U.S.C. § 1 *et seq.*

PARTIES

2. Lupercal is a limited liability company organized and existing under the laws of the State of Texas with its principal place of business in Dallas, Texas.

3. Upon information and belief, Cullen/Frost Bankers, Inc., (“CF”) is a Texas business corporation with its headquarters located at 100 West Houston St., San Antonio, Texas 78205. CF has regular and established places of business in this District, including its San Antonio headquarters. With consolidated total assets of \$32.3 billion (as of 2018), CF is one of the largest independent bank holding companies headquartered in the State

of Texas. CF may be served with process through its registered agent, Trey Banack, 111 W. Houston St., San Antonio, TX 78205.

4. Upon information and belief, Frost Bank (“FB”) is a Texas-chartered bank, the principal operating subsidiary and sole banking subsidiary of CF, with its headquarters and executive offices located at 100 West Houston St., San Antonio, Texas 78205. FB does business through approximately 131 financial centers across Texas, including numerous locations within this District. With \$27.2 billion in total deposits, FB is one of the largest commercial banks headquartered in the State of Texas. FB may be served with process through its registered agent, Stan McCormick, 100 W. Houston St., San Antonio, TX 78025.

JURISDICTION AND VENUE

5. This Court has original jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1338(a).

6. Upon information and belief, Defendant is subject to personal jurisdiction of this Court based upon it having regularly conducted business, including the acts complained of herein, within the State of Texas and this judicial district and/or deriving substantial revenue from goods and services provided to individuals in Texas and in this District.

7. Venue is proper in this District under 28 U.S.C. §§ 1391 and 1400 because Defendants have committed acts of infringement and have regular and established places of business in this judicial district.

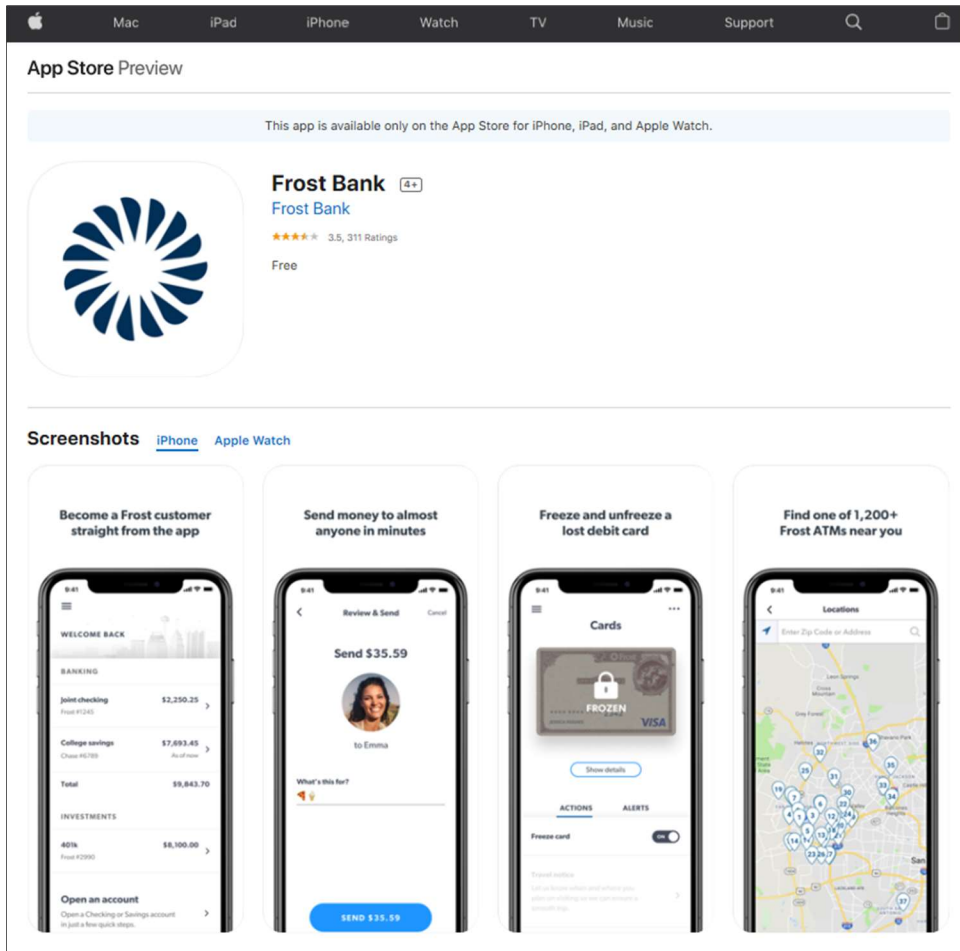
COUNT I
(Infringement of U.S. Patent No. 9,386,094)

8. Lupercal incorporates paragraphs 1 through 7 as though fully set forth herein.

9. Plaintiff is the owner, by assignment, of U.S. Patent No. 9,386,094 (the “’094 Patent”), entitled SYSTEM AND METHOD FOR MEDIA SUBMISSION, which issued on July 5, 2016. A copy of the ’094 Patent is attached as Exhibit A.

10. The ’094 Patent is valid, enforceable, and was duly issued in full compliance with Title 35 of the United States Code.

11. Defendant provides the Frost Mobile Banking App for use with Apple iOS devices and Android devices, which is available for download from Apple’s iTunes App Store and Google Play Apps:



Everything we do is aimed at giving our customers a better banking experience every time they interact with us. And our app is no exception.

Open an Account with the App

Banking better is easier than ever—simply download the app.
It only takes a few minutes to open and fund a checking account.

Send Money to Anyone

Send money to anyone with just their mobile number or email. Just select them from your contact list. No need to ask for their account information.

See all Your Finances

Add your accounts from other banks to see account balances and transactions. Your complete financial picture in one place.

Deposit Checks

Securely deposit checks with a generous daily limit and next business day fund availability when you deposit before 9pm.

Quick and Secure

Log in with an easy-to-use four digit PIN that is unique to your device or simply use your fingerprint.

Personal Help 24/7

Talk directly to a Frost banker with the touch of a button.

Apple watch


Quickly see your balances and transactions on your Apple Watch.

Other Features Include:

- * Send money to anyone, anywhere and make bill payments on the go
- * Create memos for each transaction
- * Locate 1,100+ Frost ATMs and 100+ financial centers
- * View and zoom, save and print cleared check images
- * See running balances, plus view and search transactions
- * View upcoming payment and transfer activity

Member FDIC

<https://apps.apple.com/us/app/frost-bank/id605494138>



Frost Bank

Frost Finance

Everyone


★ ★ ★ ★ ★ 2,669

✕ This app is incompatible with all of your devices.

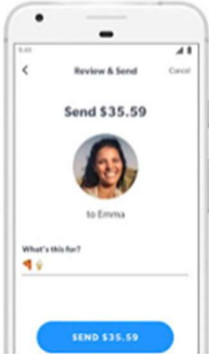
Add to Wishlist

Install

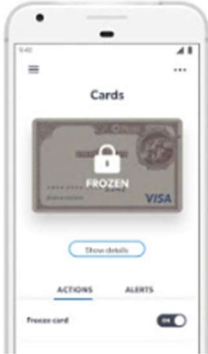
Become a Frost customer straight from the app



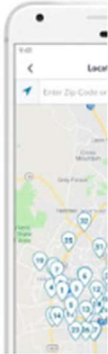
Send money to almost anyone in minutes



Freeze and unfreeze a lost debit card



Find one of 1 ATMs



Everything we do is aimed at giving our customers a better banking experience every time they interact with us. And our app is no exception.

Send Money to Anyone

Send money to anyone with just their mobile number or email. Just select them from your contact list. No need to ask for their account information.

See all Your Finances

Add your accounts from other banks to see account balances and transactions. Your complete financial picture in one place.

Deposit Checks

Quick and Secure

Log in with an easy-to-use four digit PIN that is unique to your device or simply use your fingerprint on phones running OS 6.0 and above.

Personal Help 24/7

Talk directly to a Frost banker with the touch of a button.

Other Features Include:

- Place a temporary freeze on your debit card
- Send money to anyone, anywhere in the U.S. and make bill payments on the go
- Create memos for each transaction
- Locate 1,000+ Frost ATMs and 100+ financial centers
- View and zoom, save and print cleared check images
- See running balances, plus view and search transactions
- View upcoming payment and transfer activity
- Customer photos of Texas

Member FDIC

https://play.google.com/store/apps/details?id=com.frostbank.android&hl=en_US

12. The Frost Mobile App enables account holders to deposit checks electronically by taking a photo of the front and back of the check. After selecting an account to deposit the check to, the user enters the amount of the check.

13. The photo of the front and back is manually taken by the user – as a result, the images produced may be blurry or otherwise undesirable, and the application enables the user to retake a given photo (front or back). A visual representation of the photos is displayed on the screen.

14. After selecting an account to deposit the check to, the user enters the amount of the check.

10:58

<
Deposit a Check

Daily Deposit Maximum	\$100,000.00
Deposited Today	\$0.00
Remaining Today	\$100,000.00

To Account
Frost Business Che
>

Check Amount
\$0.00

Deposits submitted before 9pm are generally available the next business day; if submitted after 9pm, funds will generally be available in 2 business days.

Next

Cancel

How can I change my daily deposit maximum?

10:58

<
Deposit a Check

Daily Deposit Maximum	\$100,000.00
Deposited Today	\$0.00
Remaining Today	\$100,000.00

To Account
Frost Business Che
>

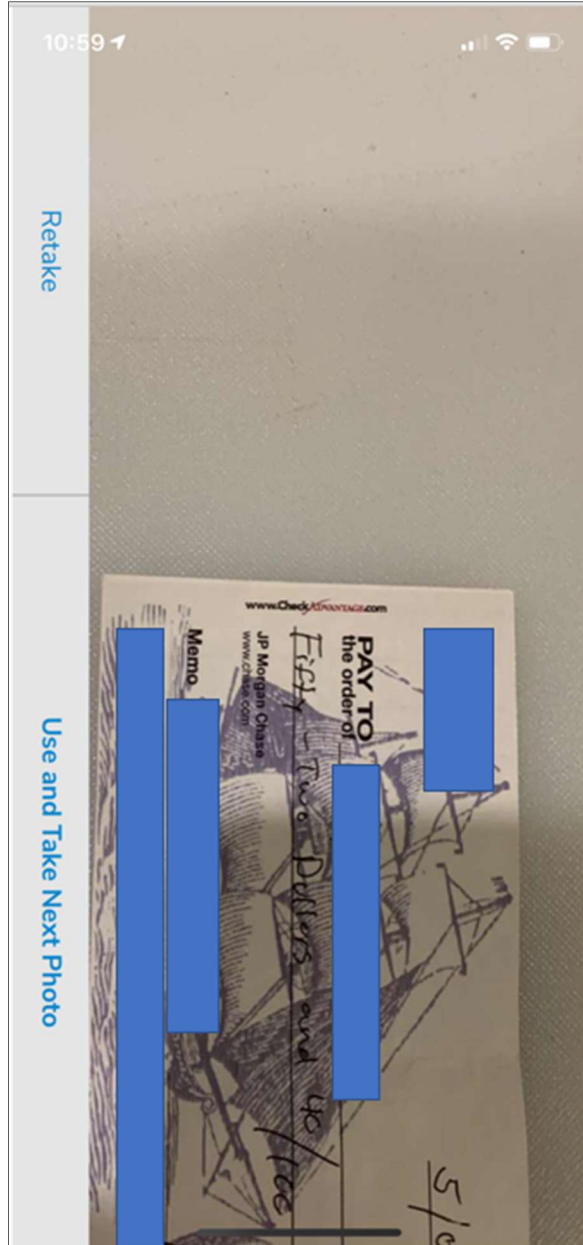
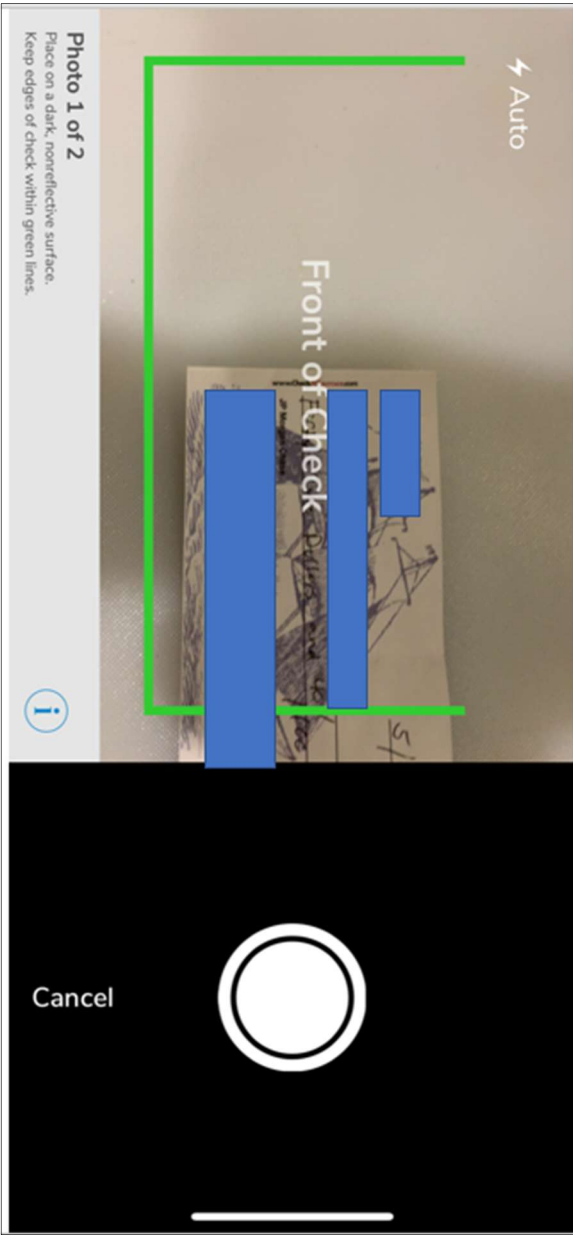
Check Amount
\$52.40

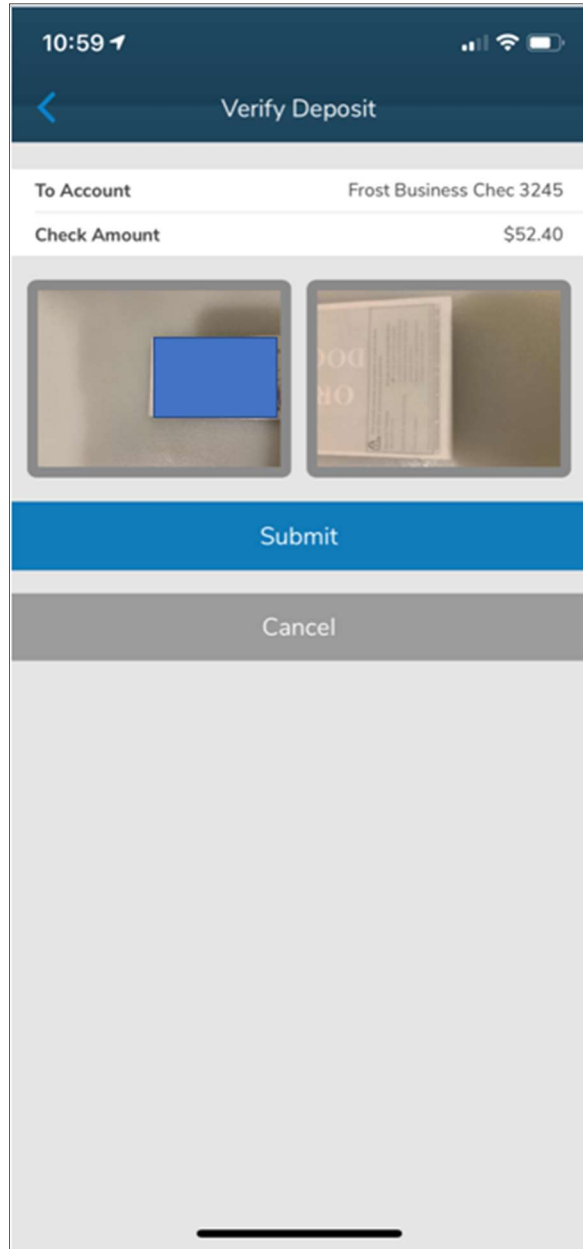
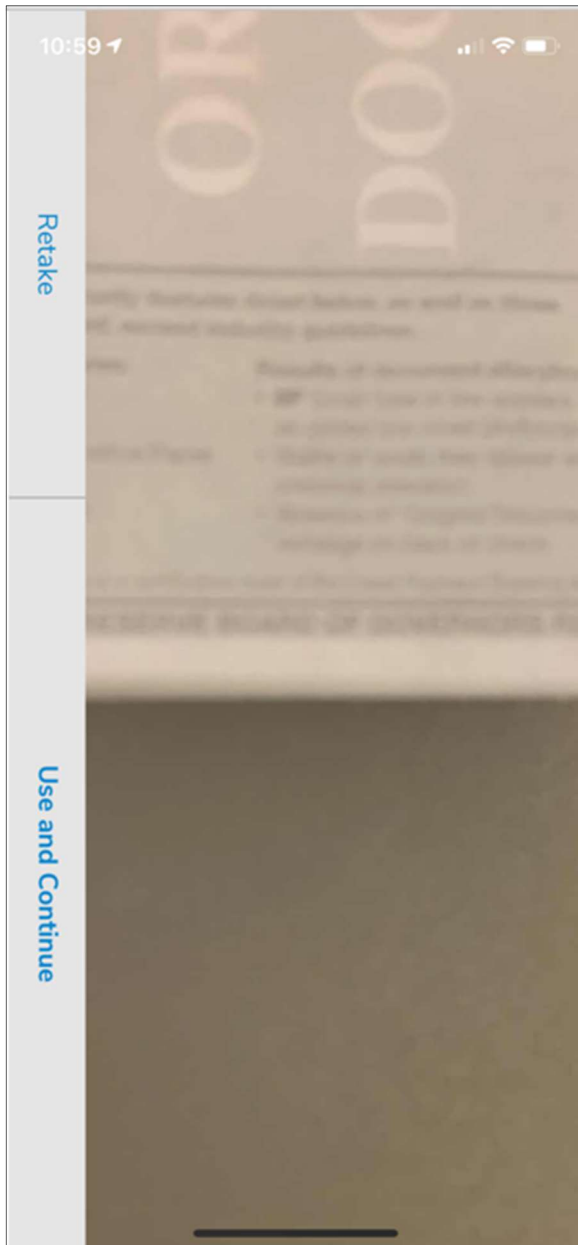
Deposits submitted before 9pm are generally available the next business day; if submitted after 9pm, funds will generally be available in 2 business days.

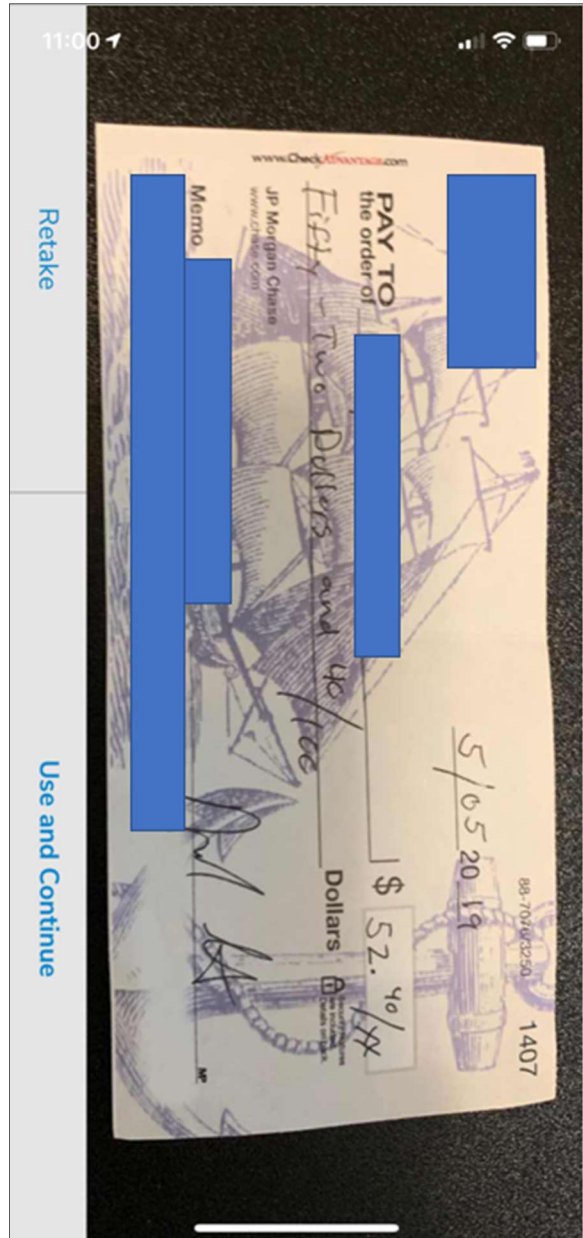
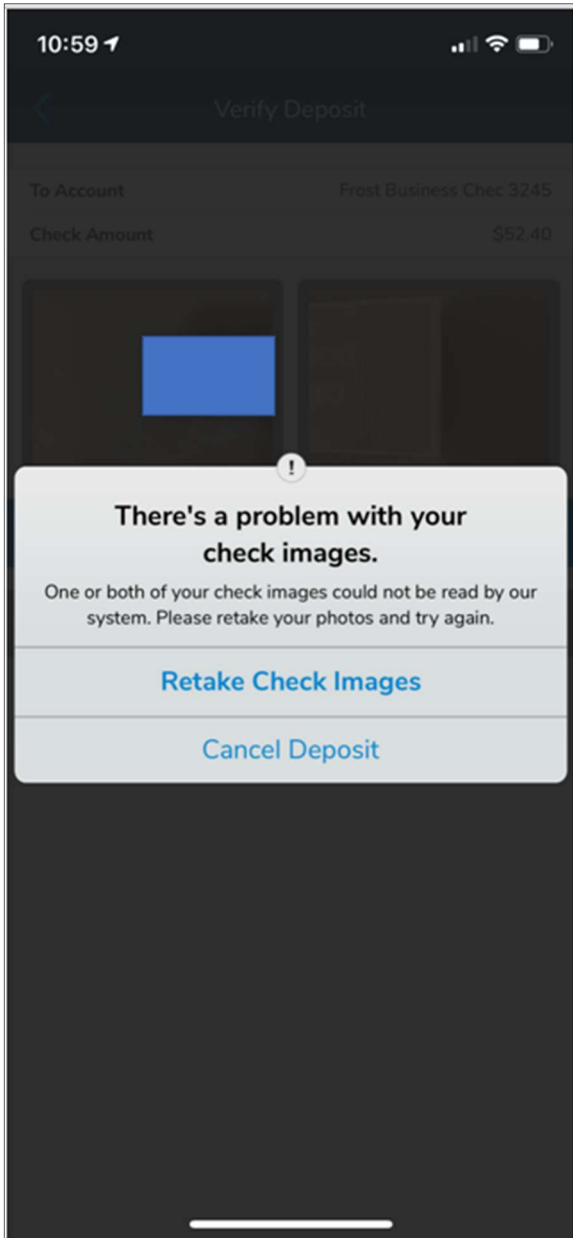
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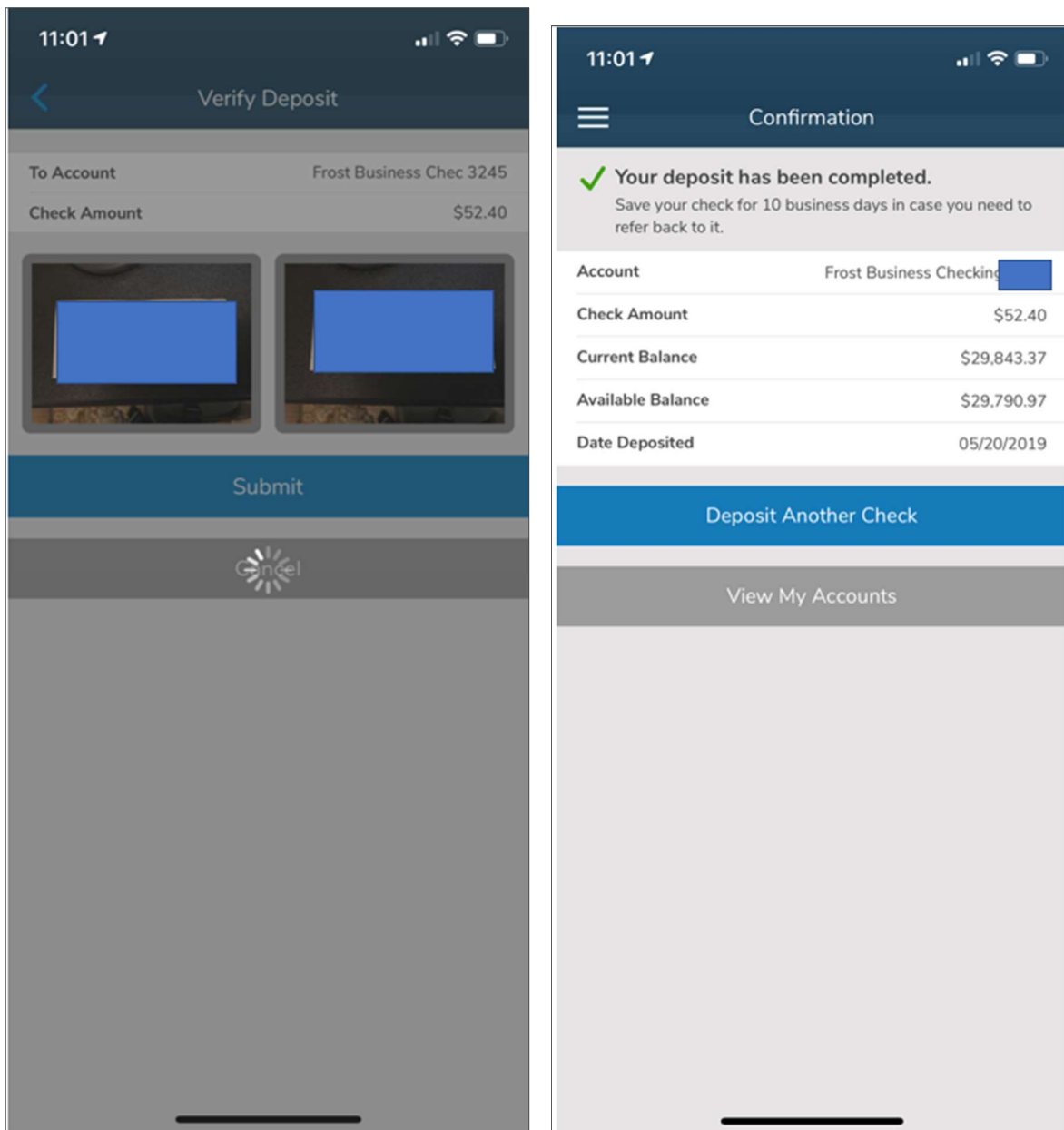
Cancel

How can I change my daily deposit maximum?









15. Upon being accepted by the user (via the Frost Mobile App), the application pre-processes the front and back images to produce and front and back pre-processed images that is controlled by one or more preprocessing parameters received from a device (e.g., a server used to download the Frost Mobile App) separate from the user device (user's smart phone) in a conversion of the one or more images or the one or more replacement images as specified for use by a receiving party.

16. Defendant controls the operation and use of the Frost Mobile App and encourages its customers to use the Frost Mobile App to deposit checks to the customer's accounts with Defendant. The Defendant's Frost Mobile App is the Accused Instrumentality through which Defendant and its customers infringe the '094 Patent.

17. At least by developing, distributing, operating, promoting, and encouraging the use of the Frost Mobile App, Defendant encourages its customers to use the Frost Mobile App to practice the claimed methods, which Defendant controls the use of and derives a direct benefit and profit from.

18. Upon information and belief, Defendant has infringed and continues to infringe one or more claims, including Claim 42, of the '094 Patent by developing, distributing, operating, promoting, and encouraging the use of the Frost Mobile App in the United States without authority. Defendant has infringed and continues to infringe the '094 Patent either directly or through the acts of inducement in violation of 35 U.S.C. § 271.

19. Defendant has been on notice of the '094 Patent at least as early as January 15, 2019 when it received a notice letter from Plaintiff, which included a claim chart comparing the '094 Patent claims to the Frost Mobile App.

20. Claim 42 recites:

42. A computer implemented method performed by an image submission tool on a user device, comprising:

causing the image submission tool to generate a visual

representation of one or more images, the visual

representation enabling a user to determine whether the one

or more images should be replaced with one or more replacement images;

causing the image submission tool to enable a user to enter text information for association with the one or more images or the one or more replacement images;

causing the image submission tool to pre-process the one or more images or the one or more replacement images to produce one or more pre-processed images, the pre-processing by the image submission tool controlled by one or more pre-processing parameters received from a device separate from the user device in a conversion of the one or more images or the one or more replacement images as specified for use by a receiving party;

causing the image submission tool to enable a user to submit the one or more pre-processed images; and

causing the image submission tool to transmit the one or more pre-processed images.

21. As indicated above, the Frost Mobile App enables account holders to deposit checks electronically by taking a photo of the front and back of the check. After selecting an account to deposit the check to, the user enters the amount of the check.

22. More particularly, the Frost Mobile App is a computer implemented method performed by an image submission tool on a user device.

23. In the process of using the Frost Mobile App, the computer implemented method causes the image submission tool to generate a visual representation of one or more images, the visual representation enabling a user to determine whether the one or more images should be replaced with one or more replacement images.

24. In the process of using the Frost Mobile App, the computer implemented method causes the image submission tool to enable a user to enter text information for association with the one or more images or the one or more replacement images.

25. In the process of using the Frost Mobile App, the computer implemented method causes the image submission tool to pre-process the one or more images or the one or more replacement images to produce one or more pre-processed images, the pre-processing by the image submission tool controlled by one or more pre-processing parameters received from a device separate from the user device in a conversion of the one or more images or the one or more replacement images as specified for use by a receiving party.

26. In the process of using the Frost Mobile App, the computer implemented method causes the image submission tool to enable a user to submit the one or more pre-processed images.

27. In the process of using the Frost Mobile App, the computer implemented method causes the image submission tool to transmit the one or more pre-processed images.

28. Lupercal has been damaged by Defendant's infringing activities.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests the Court enter judgment against Defendant:

1. declaring that the Defendant has infringed the '094 Patent;
2. awarding Plaintiff its damages suffered as a result of Defendant's infringement of the '094 Patent;
3. awarding Plaintiff its costs, attorneys' fees, expenses, and interest; and
4. granting Plaintiff such further relief as the Court finds appropriate.

JURY DEMAND

Plaintiff demands trial by jury, Under Fed. R. Civ. P. 38.

Dated: May 1, 2020

Respectfully submitted,

/s/ Raymond W. Mort, III

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**ATTORNEYS FOR PLAINTIFF
LUPERCAL LLC**